HONG KONG PRINTING CO. SDN. BHD.

v.

LAU KOOI SENG & ANOR.

HIGH COURT MALAYA, PENANG
MOHAMED DZAIDDIN J
[SUIT NO. 755 OF 1976]
28 OCTOBER 1985

PARTNERSHIP: *Change in constitution of partnership - Deed of dissolution - Liability for debt of firm - Sections 5, 6 of Registration of Businesses Act 1956 - Registration of termination.*

The 2nd defendant (one Wong Jong Peng) was applying by way of summons-in-chambers for several matters, being (a) leave for an extension of time to make application for leave for him to file his defence within 14 days from the grant of the Order consequent to this application, (b) leave for stay of execution of Bankruptcy Petition *vide* Bankruptcy No. 250 of 1984, and (c) an Order that judgment in default of defence dated 15 June 1981 against him be set aside.

The 2nd defendant stated that he was a partner of the firm, Artvert Associates, up to 31 August 1974 but that by a deed of dissolution dated 10 February 1975 between him and the 1st defendant, he ceased to be a partner of the firm. On 19 November 1976, the plaintiff filed this action against the defendants claiming for a sum of RM10,325.86 being money owed to the plaintiff for services rendered at the request of the defendants. The 2nd defendant contended that the debt was in respect of services rendered after his retirement as a partner of the firm and he could not therefore be liable for any debt by the firm after 10 February 1975.

Held:

[1] The 2nd defendant was granted leave to extend time under (a) above. The Judge exercised his discretion to do so under O. 3 r. 5 of the Rules of the High Court 1980.

[2] From the particulars in the Registry of Businesses, it is clear that the 2nd defendant had been represented to be a partner of the firm until 24 November 1976 when the particulars of the change of the status of the firm into a private limited company were duly registered with the Registrar of Business. It also appears that neither was the dissolution of 10 February 1975 notified to the Registrar.

[3] The plaintiff had no knowledge of the dissolution or the firm's conversion into a private limited company. Neither was the plaintiff specifically notified of the change of firm or withdrawal of its partners, The plaintiff was entitled to rely on the particulars with the Registry of Business - see ss. 5 and 6 of the Act.

[4] The plaintiff's action against the 2nd defendant in consequence of which the judgment in default was obtained is valid and proper.

[Prayers (b) and (c) of application dismissed with costs.]

Case referred to:
Hup Aik Tin Mining Co. v. Kam Hoy Trading [1969] 1 MLJ 93

Legislation referred to:
Registration of Businesses Act 1956, ss. 5, 6
Rules of the High Court 1980, O. 3 r. 5

For the plaintiff - Mr. Lim Chien Seng; M/s. Presgrave & Matthews
For the defendants - Mr. R. N. Raja; M/s. R. N. Raja

JUDGMENT

Mohamed Dzaiddin J:

This was an application by way of summons-in-chambers by the 2nd defendant for leave for an extension of time to make the application for leave for him to file his defence within 14 days from the grant of the Order consequent to this application and for leave for stay of execution of Bankruptcy Petition *vide* Bankruptcy No. 250 of 1984. The 2nd defendant had also asked for an Order that judgment in default of defence dated 15 June 1981 against him be set aside. The grounds of the application were stated in his affidavit (encl. 26) affirmed on 3 May 1985. On the first prayer, I grant the 2nd defendant leave. I exercise my discretion to extend time under O. 3 r. 5 of the Rules of the High Court 1980. However, with regard to the remaining prayers, I refuse leave for the following reasons.

Briefly, the 2nd defendant denied that he was a partner of the firm, Artvert Associates, at the time when plaintiff commenced the present suit against the firm and himself on 19 November 1976. He admitted being a partner up to 31 August 1974 but by a deed of dissolution dated 10 February 1975 between him and the 1st defendant, he ceased to be a partner of the firm. In the meantime, on 19 November 1976 the plaintiff filed this action against the defendants claiming for a sum of RM10,325.86 being money owed to the plaintiff for services rendered at the request of the defendants. From the particulars of the statement of claim it appears this amount related to sale invoices incurred between February 1976 and November 1976.

Mr. Raja, on behalf of the 2nd defendant submitted that his client could not in any way be liable for any debt by the firm because by a deed of dissolution dated 10 February 1975 he had ceased to be a partner of the firm. Moreover, it was contended that the debt was in respect of services rendered after his retirement as a partner of the firm.

There was exhibited to the affidavit of the 2nd defendant a certified copy of the business registration particulars of the firm (WJP2). An interesting feature in this document was a record clearly stating that the business of the firm was terminated on 31 August 1974 for reason that it was converted into a private limited company. However, the Notification of Termination of Business in "Form C" was only registered with the Business Registry on 24 November 1976. Section 5 of the Registration of Businesses Act 1956 states that particulars as to the commencement, carrying on and termination of a business, and as to any change on the general nature, name or associates of the business and such other particulars shall be submitted to the Registrar for registration. Section 6 of the same Act provides that when and so long as any person is recorded in any register as an associate of a business, it shall be evidence against him or any person claiming through or under him that he was such an associate unless it is proved that such person was not at any material time such an associate.

In my opinion, from the particulars in the Registry of Businesses (Exh. WJP2) it is clear that the 2nd defendant had been represented to a partner of the firm until 24 November 1976 when the particulars of the change of the status of the firm into a private limited company was duly registered with the Registrar of Businesses. It is unfortunate that although the

partnership was converted to a private limited company on 31 August 1974, such termination was only registered on 24 November 1976. It also appears that neither was the dissolution of 10 February 1975 notified to the Registrar.

The plaintiff through Mr. Ooi Chin Leong affirmed an affidavit dated 3 October 1985 stating that at no time did the 1st and/or the 2nd defendant give notice to the plaintiff of the dissolution of the partnership until after the commencement of the civil suit. The plaintiff had traded previously with the firm prior to its dissolution. It is entitled to be specifically notified of the change of the firm or withdrawal of its partners. Mr. Lim, Counsel for the plaintiff, had rightly submitted that the plaintiff had no knowledge of the dissolution of its conversion into a private limited company. The plaintiff was entitled to rely on the particulars with the Registry of Businesses. See s. 6 of the Act. The case of *Hup Aik Tin Mining Co. v. Kam Hoy Trading* [1969] 1 MLJ 93 is one case in point. Therefore, from the facts in the present case, I am satisfied that the plaintiff's action against the 2nd defendant in consequence of which the judgment in default was obtained is valid and proper. Accordingly, the 2nd defendant's application in this summons-in-chambers is dismissed with costs.

Also found at [1986] 1 CLJ 211